nessee (1886) 117 U. S. 151; *Dobbins* v. *Com'rs of Erie Co.* (1842) 16 Pet. 435. Of course only a tax which impairs the agency in its power to serve the government is prohibited. *R. R.* v. *Peniston* (1873) 18 Wall. 5. The exemption extends as well to a general tax as to one eo nomine, *Bank of Commerce* v. *N. Y.* (1862) 2 Black. 620, though in the earlier cases the taxes were all imposed eo nomine, *Weston* v. *Charleston* (1829) 2 Pet. 449.

The State government, on the other hand, being vested with residuary powers, may assume to engage in many transactions that are not necessary instrumentalities of government. Heretofore the courts have been liberal in the construction of what is a necessary and proper governmental function. Revenues of a municipal corporation derived from railroad bonds were held exempt. *U. S.* v. *Ry. Co.* (1872) 17 Wall. 322. In *Philadelphia* v. *The Collector* (1866) 5 Wall. 720, it was assumed but not decided that a municipal lighting plant would be exempt from Federal taxation, and it was generally supposed that a State railroad would be so exempt. 12 Opinion of Att'y. Gen. 277. The principal case would seem, however, to confine the exemption to its proper limits, that is to the necessary and proper means and agencies of government, which would, if taxable, be impaired in their efficiency.

It is recognized that the State of South Carolina here controls the liquor business by virtue of the police power used in its broader sense. *Vance* v. *Vandercook* (1898) 170 U. S. 438. The effect of the present decision is to determine that while the State of South Carolina, in taking over the liquor business to itself, may have been exercising proper functions under the residuary clause of the Constitution and within the police power, it was not thereby creating or exercising a necessary instrumentality of State government, and therefore is liable to the Federal government under the special revenue tax.

LIABILITY OF TRANSFEREE OF STOCK UNDER FORGED DEED.— What are the rights of a corporation against a person, who has been registered as a stock holder by the corporation upon presentment of a forged deed of transfer, and has assigned the stock, both parties having acted in entire good faith and without negligence?

Numerous seeming analogies and one true ground for liability have been suggested. First. It is held in Massachusetts that one who innocently presents a forged transfer to a corporation to have a certificate issued to him is in a position analogous to one who sells stock to the corporation, and that the law will consequently imply like warranties of title and genuineness in both cases. *Boston & Albany R. R. Co.* v. *Richardson* (1883) 135 Mass. 473. It seems apparent that a person who presents a transfer for registration is not in a situation similar to a vendor.

Second. Where the transfer is made under a forged power of attorney the innocent converter is liable upon a warranty of authority implied in law, because he makes a representation implied in fact that he has authority. *Starkey* v. *Bank of England* [1903] A. C.

114. Assume that the person who presents the forged deed of transfer to the corporation makes a representation implied in fact, to the effect that the signature and deed of transfer are genuine. It is argued by the House of Lords, in a dictum in a recent case, that because the courts have attached a warranty to the one innocent representation, that they must attach it to the other. *Sheffield Corporation* v. *Barclay* [1905] A. C. 392. This is clearly a non sequitur, because the person making it in the latter case is not in the position of an agent, but is acting for himself. But it may be contended that the principle underlying the decision of the agency cases, should be applied to the present case. That principle may be stated to be that where a person who makes an innocent representation has better means of ascertaining its truth, than the person to whom he makes it, it is just that the the law should say he warrants the truth of his representation. This principle is plainly contra to the rule, that no action for damages will lie for an innocent misrepresentation, Huffcutt on Agency, 2d ed. 231, for it is true with respect to most representations implied in fact, that the maker has better means of knowing whether they are true, than the person who relies on them, for otherwise they would not be made, nor would they be relied upon. *Collins* v. *Evans* (1844) 5 Q. B. 820. It is true that this rule of law may at times seem to work injustice, but it is nevertheless law. *Collins* v. *Evans* supra; *Peek* v. *Derry* (1889) L. R. 14 App. Cas. 337. It is submitted that when the Lord Chancellor in *Sheffield Corporation* v. *Barclay*, supra, influenced by the feeling that justice requires a warranty because the defendant had superior means for ascertaining the truth of his representation, yields to this influence and grafts a warranty upon the representation, he is in reality unconsciously attacking and repudiating the doctrine that no action lies for an innocent misrepresentation, and his decision though it may be sound justice is not sound law.

Third. The Lord Chancellor said it is well established "that when an act is done by one person at the request of another . . . and such act turns out to be injurious to the right of a third party, the person doing it is entitled to an indemnity from him who requested that it should be done." He cites only the case of *Dugdale* v. *Lovering* (1875) L. R. 10 C. P. 196, which does not sustain that proposition. It is believed that this rule whatever might be its support in the realm of ethics has none in law. In many cases it would lead to surprising results. Lord Davey in his opinion said, "that where a person invested with a statutory or common law duty of a ministerial character is called upon to exercise that duty . . . and acts in a manner which is apparently legal, but . . . thereby incurs liability to third parties, there is implied by law a contract by the person making the request to keep indemnified the person having the duty. . . ." In the cases cited by him the agreement to indemnify was implied in fact and not in law. See especially the language of Grove, J. in *Dugdale* v. *Lovering*, supra, upon which decision most reliance is placed. A

rule of law which makes the person to whom a ministerial duty is due liable to the person who owes the duty would frequently render the possession of the right a burden rather than a benefit, and would strangely reverse the position of the parties.

Lastly, when a corporation, however honest its conduct, registers a forged deed of transfer, both the corporation and the person who bona fide presented it and assumed dominion over the certificate of the original registered owner are liable to him for conversion. *Pratt* v. *Taunton Copper Co.* (1877) 123 Mass. 110. When he obtains judgment for reinstatement against the corporation, Prof. Ames says, that upon principles of obvious justice, he must hold his claim against the converter as a constructive trustee for the benefit of the company. 17 Harv. Law Rev. 543. This doctrine is sound, but it cannot be applied to the principal case because the defendant did not receive the certificate of the original owner.

SITUS OF ROLLING STOCK FOR TAXATION UNDER DUE PROCESS CLAUSE.—When personal property consisted mainly of personal ornaments, household utensils, and farm and trade implements, the rule became incorporated in the law that mobilia sequuntur personam, and personal property was taxed at the domicile of the owner. This maxim still remains. *Cesena Sulphur Co.* v. *Nicholson* (1876) 1 Ex. Div. 428; *Winston* v. *Salem* (1902) 131 N. C. 404; *Pacific R. R.* v. *Cass Co.* (1873) 53 Mo. 17, 31; Cooley Taxation 3d ed. 86; see also *Marye* v. *B. and O. R. R.* (1888) 127 U. S. 117, 123, and *Pullman's Car Co.* v. *Pa.* (1891) 141 U. S. 18. But as the value and relative importance of personal property have increased, the States have also taxed personal property where it is located, without regard to the domicile of the owner. Such statutes have been sustained by the courts, both as to tangible personalty, *Boston Loan Co.* v. *Boston* (1884) 137 Mass. 332; *Brown* v. *Houston* (1885) 114 U. S. 622; and as to many kinds of intangible personalty, 5 COLUMBIA LAW REVIEW 50; *Adams Express Co.* v. *Ohio* (1897) 165 U. S. 194, 166 U. S. 185, 223; *Tappan* v. *Merchants National Bank* (1873) 19 Wall. 490; *Board of Assessors* v. *Comptoir National* (1903) 191 U. S. 388. This situation obviously leads in many cases to double taxation. Although double taxation is not illegal, *Coe* v. *Errol* (1886) 116 U. S. 517, nevertheless from an economic or ethical standpoint it is highly undesirable, and therefore the courts have tried, so far as possible, to minimize it. Thus they have refused to read the fiction mobilia sequuntur personam into a statute relative to tangible personal property. *People* ex rel. *Hoyt* v. *Commissioners* (1861) 23 N. Y. 224. But further than this the State courts have not gone; where the intention to tax personalty outside of the jurisdiction has been clearly expressed, they have uniformly upheld the validity of the statutes. *Bemis* v. *Boston* (Mass. 1867) 14 Allen 366; *Commonwealth* v. *Am. Dredging Co.* (1888) 122 Pa. St. 386.

Additional difficulty has been found in applying these rules of taxation to that important species of personal property, rolling